THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

Writ Petition No.13322 of 2004

ORDER:

Heard the learned counsel for the petitioners and the learned Standing Counsel for the 1st respondent.

2. The case of the petitioners is that they were the Directors of M/s.Goutham Cements Private Limited and one K.V.Narasimha Rao was the Managing Director. The entire unit fell sick. The assets and liabilities of the said unit were taken over by the 1st respondent and A.P.S.F.C. and they have sold away the entire unit and appropriated the amount of the sale proceeds. The petitioners are not the Directors of the said company since 08-06-1991, the date on which the Management was taken over by the 1st respondent. The State Bank of India, Guntur Branch, filed O.A.No.197 of 1996 before the Debts Recovery Tribunal, Bangalore, which was transferred to Visakhapatnam. In the said case, the 1st respondent is also arrayed as the 12th respondent. While so, the 2nd respondent issued a distraint order dated 13-11-2003 under Section 8 of the A.P.Revenue Recovery Act, 1864 distraining the personal properties belonging to the petitioners alleging that they are liable to pay an amount of Rs.5,27,36,000/- as arrears of revenue. Thereafter, the 1st respondent issued proceedings on 27-05-2004 informing the petitioners with regard to the decision taken for attachment of the movable and immovable assets of the petitioners under the provisions of A.P.Revenue Recovery Act. The said proceedings are now challenged in the present writ petition.

3. The petitioners state that they are not guarantors for the loan taken by the company in the year 1983 and they have not signed any letters of guarantee or documents of guarantee or acknowledgment of loan at any time after 1991. Therefore, they are not liable to pay any amount for the dues, if any, of Goutham Cements Private Limited. Further, the claim of the respondents is totally time barred and they cannot demand the payment of a time barred debt. The petitioners further state that pursuant to the impugned proceedings, the 2nd respondent issued legal notice on 14-06-2004 informing that they are not liable to pay any amount, but the 2nd respondent sent his staff to the houses of the petitioners on 23-07-2004 and they demanded the petitioners to pay the amount immediately failing which the properties would be put to auction. Hence, the present writ petition.

4. The 1st respondent filed a counter affidavit stating that it is a Government Company incorporated under the Companies Act, 1956. The provisions of State Financial Corporations Act, 1951 are applicable to the 1st respondent for recovery of dues. The Government of Andhra Pradesh issued a Notification No.88 published in A.P.Gazette No.28-A dated 11-08-1983 in exercise of the powers conferred by proviso to sub-Section (1) of Section 52-A of the Andhra Pradesh Revenue Recovery Act, 1864, declaring the loans and advances or other sums due to the 1st respondent Corporation to be recovered as arrears of land revenue.

M/s.Goutham Cements Private Limited was promoted by one K.V.Narasimha Rao and his associates and approached the 1st respondent for setting up a unit at Konanki village, Piduguralla Taluk, Guntur District, for manufacture of port land cement based on VSK Technology. The writ petitioners stood as guarantors for the due

repayment of the loan sanctioned to the company and executed an agreement of guarantee on 28-11-1996 in favour of the 1st respondent. The 1st respondent invested a sum of Rs.2.69 lakhs in the equity capital and sanctioned and disbursed seed capital of Rs.12.00 lakhs and term loan of Rs.107.45 lakhs. The 1st respondent also sanctioned and disbursed D.G.Set loan of Rs.4.68 lakhs to the company. Due to default in payment of principal and interest, the unit was seized on 23-12-1993 under Section 29 of the S.F.C. Act. After making several advertisements, the unit was sold for Rs.201.40 lakhs in August, 1998. The 1st respondent received its prorata consideration of Rs.91.27 lakhs. The petitioners being guarantors for the due repayment of the loan sanctioned to M/s.Goutham Cements Private Limited, they are bound by the terms of the guarantee agreement. The liability of the guarantors is coextensive with the borrower. Whether the petitioners are directors of the company or ceased to be the directors, they are bound by the terms of the guarantee agreement. The company is still due a sum of Rs.527.37 lakhs as on 31-08-1998. The 1st respondent issued notices to the petitioners on 18-11-2003 and 27-05-2004 under the Revenue Recovery Act. Pursuant to the notice issued by the 2nd respondent on 13-11-2003, the petitioners submitted a proposal on 24-11-2003 stating that they are prepared to pay Rs.40,000/- each for relieving their personal guarantees, but the said proposal was not accepted since the offer was too low and does not fit in the norms of the 1st respondent Corporation. The petitioners settled their dues to APSFC by paying a sum of Rs.9.00 lakhs. When the 1st respondent called the petitioners for negotiation, they have issued legal notice dated 04-06-2004, for which the 1st respondent has given reply.

6. From the pleadings of the parties, it is clear that the 1st respondent advanced amounts to M/s.Goutham Cements Private Limited and the petitioners stood as guarantors and they have also executed the agreement of guarantee and also furnished affidavits declaring that the immovable properties owned by them are free from encumbrances, charges, court attachments etc. After selling the unit for Rs.201.40 lakhs in August, 1998, the 1st respondent received its prorata consideration of Rs.91.27 lakhs. After sale of the unit, the Company is still due a sum of Rs.527.37 lakhs as on 31-08-1998. The 1st respondent issued impugned proceedings to the petitioners indicating that it decided to initiate recovery proceedings against them under A.P.R.R.Act by attaching their movable/immovable assets, if they fail to pay the dues within 15 days. The 1st respondent was given powers conferred by proviso to sub-section (1) of Section 52-A of the Andhra Pradesh Revenue Recovery Act, 1864 vide Notification No.88 published in A.P.Gazette No.28-A dated 11-08-1983 and those powers are not in dispute.

7. Since the impugned proceeding is only in the nature of a notice issued to the petitioners giving them an opportunity to respond to the proposal, it cannot be said that it is illegal. It is also a matter of record that pursuant to the impugned proceedings, the petitioners issued a notice dated 04-06-2004 and kept quiet thereafter.

8. In the circumstances, there are no merits in the writ petition and the same is liable to be dismissed.

9. Accordingly, the writ petition is dismissed. However, it is made clear that dismissal of the writ petition does not prevent the petitioners from

negotiating with the 1st respondent for settlement of the case, if any. There shall be no order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

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A.RAMALINGESWARA RAO, J

Date: 25-04-2014
Prv

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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Dated 25-04-2014

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